

HOUSE BILL No. 1481

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-24-1; IC 35-33-5-5.

Synopsis: Forfeiture. Permits seized property to be forfeited to the state only if the owner of the property has been convicted of a criminal offense. Authorizes forfeiture of a vehicle operated by a person with a lifetime driver's license suspension. Repeals a provision permitting the state to turn over seized property to the federal government. Makes conforming amendments and repeals an obsolete section.

Effective: July 1, 2017.

VanNatter

January 18, 2017, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1481

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-24-1-1, AS AMENDED BY P.L.237-2015,
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 1. (a) The following may be seized:
4 (1) All vehicles (as defined by IC 35-31.5-2-346), if they are used
5 or are intended for use by the person or persons in possession of
6 them to transport or in any manner to facilitate the transportation
7 of the following:
8 (A) A controlled substance for the purpose of committing,
9 attempting to commit, or conspiring to commit any of the
10 following:
11 (i) Dealing in or manufacturing cocaine or a narcotic drug
12 (IC 35-48-4-1).
13 (ii) Dealing in methamphetamine (IC 35-48-4-1.1).
14 (iii) Dealing in a schedule I, II, or III controlled substance
15 (IC 35-48-4-2).
16 (iv) Dealing in a schedule IV controlled substance
17 (IC 35-48-4-3).



- 1 (v) Dealing in a schedule V controlled substance
 2 (IC 35-48-4-4).
 3 (vi) Dealing in a counterfeit substance (IC 35-48-4-5).
 4 (vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
 5 (viii) Possession of methamphetamine (IC 35-48-4-6.1).
 6 (ix) Dealing in paraphernalia (IC 35-48-4-8.5).
 7 (x) Dealing in marijuana, hash oil, hashish, or salvia
 8 (IC 35-48-4-10).
 9 (xi) Dealing in a synthetic drug or synthetic drug lookalike
 10 substance (IC 35-48-4-10.5, or IC 35-48-4-10 before its
 11 amendment in 2013).
 12 (B) Any stolen (IC 35-43-4-2) or converted property
 13 (IC 35-43-4-3) if the retail or repurchase value of that property
 14 is one hundred dollars (\$100) or more.
 15 (C) Any hazardous waste in violation of IC 13-30-10-1.5.
 16 (D) A bomb (as defined in IC 35-31.5-2-31) or weapon of
 17 mass destruction (as defined in IC 35-31.5-2-354) used to
 18 commit, used in an attempt to commit, or used in a conspiracy
 19 to commit an offense under IC 35-47 as part of or in
 20 furtherance of an act of terrorism (as defined by
 21 IC 35-31.5-2-329).
 22 (2) All money, negotiable instruments, securities, weapons,
 23 communications devices, or any property used to commit, used in
 24 an attempt to commit, or used in a conspiracy to commit an
 25 offense under IC 35-47 as part of or in furtherance of an act of
 26 terrorism or commonly used as consideration for a violation of
 27 IC 35-48-4 (other than items subject to forfeiture under
 28 IC 16-42-20-5 or IC 16-6-8.5-5.1, before its repeal):
 29 (A) furnished or intended to be furnished by any person in
 30 exchange for an act that is in violation of a criminal statute;
 31 (B) used to facilitate any violation of a criminal statute; or
 32 (C) traceable as proceeds of the violation of a criminal statute.
 33 (3) Any portion of real or personal property purchased with
 34 money that is traceable as a proceed of a violation of a criminal
 35 statute.
 36 (4) A vehicle that is used by a person to:
 37 (A) commit, attempt to commit, or conspire to commit;
 38 (B) facilitate the commission of; or
 39 (C) escape from the commission of;
 40 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 41 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 42 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense



- 1 under IC 35-47 as part of or in furtherance of an act of terrorism.
 2 (5) Real property owned by a person who uses it to commit any of
 3 the following as a Level 1, Level 2, Level 3, Level 4, or Level 5
 4 felony:
 5 (A) Dealing in or manufacturing cocaine or a narcotic drug
 6 (IC 35-48-4-1).
 7 (B) Dealing in methamphetamine (IC 35-48-4-1.1).
 8 (C) Dealing in a schedule I, II, or III controlled substance
 9 (IC 35-48-4-2).
 10 (D) Dealing in a schedule IV controlled substance
 11 (IC 35-48-4-3).
 12 (E) Dealing in marijuana, hash oil, hashish, or salvia
 13 (IC 35-48-4-10).
 14 (F) Dealing in a synthetic drug or synthetic drug lookalike
 15 substance (IC 35-48-4-10.5, or IC 35-48-4-10 before its
 16 amendment in 2013).
 17 (6) Equipment and recordings used by a person to commit fraud
 18 under IC 35-43-5-4(10).
 19 (7) Recordings sold, rented, transported, or possessed by a person
 20 in violation of IC 24-4-10.
 21 (8) Property (as defined by IC 35-31.5-2-253) or an enterprise (as
 22 defined by IC 35-45-6-1) that is the object of a corrupt business
 23 influence violation (IC 35-45-6-2).
 24 (9) Unlawful telecommunications devices (as defined in
 25 IC 35-45-13-6) and plans, instructions, or publications used to
 26 commit an offense under IC 35-45-13.
 27 (10) Any equipment, including computer equipment and cellular
 28 telephones, used for or intended for use in preparing,
 29 photographing, recording, videotaping, digitizing, printing,
 30 copying, or disseminating matter in violation of IC 35-42-4.
 31 (11) Destructive devices used, possessed, transported, or sold in
 32 violation of IC 35-47.5.
 33 (12) Tobacco products that are sold in violation of IC 24-3-5,
 34 tobacco products that a person attempts to sell in violation of
 35 IC 24-3-5, and other personal property owned and used by a
 36 person to facilitate a violation of IC 24-3-5.
 37 (13) Property used by a person to commit counterfeiting or
 38 forgery in violation of IC 35-43-5-2.
 39 (14) After December 31, 2005, if a person is convicted of an
 40 offense specified in IC 25-26-14-26(b) or IC 35-43-10, the
 41 following real or personal property:
 42 (A) Property used or intended to be used to commit, facilitate,



- 1 or promote the commission of the offense.
 2 (B) Property constituting, derived from, or traceable to the
 3 gross proceeds that the person obtained directly or indirectly
 4 as a result of the offense.
- 5 (15) Except as provided in subsection (e), a vehicle used by a
 6 person who operates the vehicle:
 7 (A) while intoxicated, in violation of IC 9-30-5-1 through
 8 IC 9-30-5-5, if in the previous five (5) years the person has two
 9 (2) or more prior unrelated convictions:
 10 (i) for operating a motor vehicle while intoxicated in
 11 violation of IC 9-30-5-1 through IC 9-30-5-5; or
 12 (ii) for an offense that is substantially similar to IC 9-30-5-1
 13 through IC 9-30-5-5 in another jurisdiction; **or**
 14 (B) on a highway while the person's driving privileges are
 15 suspended in violation of IC 9-24-19-2 through IC 9-24-19-3,
 16 if in the previous five (5) years the person has two (2) or more
 17 prior unrelated convictions:
 18 (i) for operating a vehicle while intoxicated in violation of
 19 IC 9-30-5-1 through IC 9-30-5-5; or
 20 (ii) for an offense that is substantially similar to IC 9-30-5-1
 21 through IC 9-30-5-5 in another jurisdiction; **or**
 22 **(C) on a highway while the person's driving privileges are**
 23 **suspended, in violation of IC 9-24-19-2 through**
 24 **IC 9-24-19-3, if the person's driving privileges have been**
 25 **suspended for life.**
- 26 If a court orders the seizure of a vehicle under this subdivision,
 27 the court shall transmit an order to the bureau of motor vehicles
 28 recommending that the bureau not permit a vehicle to be
 29 registered in the name of the person whose vehicle was seized
 30 until the person possesses a current driving license (as defined in
 31 IC 9-13-2-41).
- 32 (16) The following real or personal property:
 33 (A) Property used or intended to be used to commit, facilitate,
 34 or promote the commission of an offense specified in
 35 IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or
 36 IC 30-2-13-38(f).
 37 (B) Property constituting, derived from, or traceable to the
 38 gross proceeds that a person obtains directly or indirectly as a
 39 result of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b),
 40 IC 30-2-10-9(b), or IC 30-2-13-38(f).
- 41 (17) An automated sales suppression device (as defined in
 42 IC 35-43-5-4.6(a)(1) or phantom-ware (as defined in



- 1 IC 35-43-5-4.6(a)(3).
 2 (18) Real or personal property, including a vehicle, that is used by
 3 a person to:
 4 (A) commit, attempt to commit, or conspire to commit;
 5 (B) facilitate the commission of; or
 6 (C) escape from the commission of;
 7 a violation of IC 35-42-3.5-1 (human trafficking) or IC 35-45-4-4
 8 (promoting prostitution).
 9 (b) A vehicle used by any person as a common or contract carrier in
 10 the transaction of business as a common or contract carrier is not
 11 subject to seizure under this section, unless it can be proven by a
 12 preponderance of the evidence that the owner of the vehicle knowingly
 13 permitted the vehicle to be used to engage in conduct that subjects it to
 14 seizure under subsection (a).
 15 (c) Equipment under subsection (a)(10) may not be seized unless it
 16 can be proven by a preponderance of the evidence that the owner of the
 17 equipment knowingly permitted the equipment to be used to engage in
 18 conduct that subjects it to seizure under subsection (a)(10).
 19 (d) Money, negotiable instruments, securities, weapons,
 20 communications devices, or any property commonly used as
 21 consideration for a violation of IC 35-48-4 found near or on a person
 22 who is committing, attempting to commit, or conspiring to commit any
 23 of the following offenses shall be admitted into evidence in an action
 24 under this chapter as prima facie evidence that the money, negotiable
 25 instrument, security, or other thing of value is property that has been
 26 used or was to have been used to facilitate the violation of a criminal
 27 statute or is the proceeds of the violation of a criminal statute:
 28 (1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a
 29 narcotic drug).
 30 (2) IC 35-48-4-1.1 (dealing in methamphetamine).
 31 (3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
 32 substance).
 33 (4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
 34 (5) IC 35-48-4-4 (dealing in a schedule V controlled substance)
 35 as a Level 4 felony.
 36 (6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a
 37 Level 3, Level 4, or Level 5 felony.
 38 (7) IC 35-48-4-6.1 (possession of methamphetamine) as a Level
 39 3, Level 4, or Level 5 felony.
 40 (8) IC 35-48-4-10 (dealing in marijuana, hash oil, hashish, or
 41 salvia) as a Level 5 felony.
 42 (9) IC 35-48-4-10.5 (dealing in a synthetic drug or synthetic drug



1 lookalike substance) as a Level 5 felony or Level 6 felony (or as
 2 a Class C felony or Class D felony under IC 35-48-4-10 before its
 3 amendment in 2013).

4 (e) A vehicle operated by a person who is not:

- 5 (1) an owner of the vehicle; or
- 6 (2) the spouse of the person who owns the vehicle;

7 is not subject to seizure under subsection (a)(15) unless it can be
 8 proven by a preponderance of the evidence that the owner of the
 9 vehicle knowingly permitted the vehicle to be used to engage in
 10 conduct that subjects it to seizure under subsection (a)(15).

11 SECTION 2. IC 34-24-1-2 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. **(a) A person's**
 13 **property may be forfeited under this chapter only if the state, or**
 14 **the state and the unit (if applicable), proves by clear and**
 15 **convincing evidence that:**

- 16 **(1) the property is subject to seizure under section 1 of this**
 17 **chapter;**
- 18 **(2) the owner of the property has been convicted of the related**
 19 **criminal offense permitting seizure of the property; and**
- 20 **(3) all other requirements described in this chapter for**
 21 **forfeiture of the property have been met.**

22 **(b) Following a person's conviction for an offense permitting**
 23 **seizure of the property under section 1 of this chapter, a court may**
 24 **order the person to forfeit property described in section 1 of this**
 25 **chapter that:**

- 26 **(1) the person acquired through commission of the offense;**
- 27 **(2) is directly traceable to property acquired through**
 28 **commission of the offense; or**
- 29 **(3) is an instrumentality of the person used to commit the**
 30 **offense.**

31 **(c) At the request of the state, or the state and the unit (if**
 32 **applicable), a court may issue an ex parte preliminary order to**
 33 **seize property described in section 1 of this chapter. Before issuing**
 34 **an order under this subsection, the court must find that:**

- 35 **(1) there is a substantial probability that:**
 - 36 **(A) the property is subject to seizure;**
 - 37 **(B) the state, or the state and the unit (if applicable), will**
 38 **prevail on the issue of forfeiture; and**
 - 39 **(C) failure to enter the order will result in the property**
 40 **being destroyed, removed from Indiana, or otherwise**
 41 **made unavailable for forfeiture; and**
- 42 **(2) the need to preserve the availability of the property**



1 through the entry of the requested order outweighs the
 2 hardship to the owner and other parties known to be claiming
 3 an interest in the property.

4 ~~(a)~~ (d) Property may be seized under this chapter by a law
 5 enforcement officer ~~only~~ without a court order if:

6 (1) the seizure is incident to a lawful:

7 (A) arrest; or

8 (B) search; or

9 ~~(C) administrative inspection;~~

10 and the law enforcement officer conducting the arrest or
 11 search has probable cause to believe that the property is
 12 subject to seizure and that the subject of the arrest or search
 13 warrant is the owner of the property;

14 (2) the property has been the subject of a prior judgment in favor
 15 of the state or unit in a proceeding under this chapter; ~~(or~~
 16 ~~IC 34-4-30.1 before its repeal);~~ or

17 (3) a court issues an order to seize the property after making an
 18 ex parte determination that: there is probable cause to believe the
 19 property is subject to seizure under this chapter; issues an order
 20 for seizure.

21 (A) there is a substantial probability that:

22 (i) the property is subject to seizure;

23 (ii) the state, or the state and the unit (if applicable), will
 24 prevail on the issue of forfeiture; and

25 (iii) failure to enter the order will result in the property
 26 being destroyed, removed from Indiana, or otherwise
 27 made unavailable for forfeiture; and

28 (B) the need to preserve the availability of the property
 29 through the entry of the requested order outweighs the
 30 hardship to the owner and other parties known to be
 31 claiming an interest in the property.

32 ~~(b)~~ (e) When property is seized under ~~subsection (a);~~ this section,
 33 the law enforcement agency making the seizure may, pending final
 34 disposition:

35 (1) place the property under seal;

36 (2) remove the property to a place designated by the court; or

37 (3) require another agency authorized by law to take custody of
 38 the property and remove it to an appropriate location.

39 ~~(c)~~ (f) Property that is seized under ~~subsection (a)~~ ~~(or~~
 40 ~~IC 34-4-30.1-2(a) before its repeal)~~ this section is ~~not~~, subject to
 41 replevin. ~~but is considered to be in the custody of the law enforcement~~
 42 ~~agency making the seizure.~~



1 SECTION 3. IC 34-24-1-3, AS AMENDED BY P.L.201-2011,
 2 SECTION 108, IS AMENDED TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) ~~The prosecuting attorney for~~
 4 ~~the county in which the seizure occurs may, within ninety (90) days~~
 5 ~~after receiving written notice from the owner demanding return of the~~
 6 ~~seized property or within one hundred eighty (180) days after the~~
 7 ~~property is seized; whichever occurs first; cause an action for~~
 8 ~~reimbursement of law enforcement costs and forfeiture to be brought~~
 9 ~~by filing a complaint in the circuit or superior court in the jurisdiction~~
 10 ~~where the seizure occurred. The action must be brought:~~

11 ~~(1) in the name of the state or the state and the unit that employed~~
 12 ~~the law enforcement officers who made the seizure if the state~~
 13 ~~was not the employer; and~~

14 ~~(2) within the period that a prosecution may be commenced under~~
 15 ~~IC 35-41-4-2 for the offense that is the basis for the seizure.~~

16 **Not later than thirty (30) days after property is seized under this**
 17 **chapter, or at the time the information is filed against the owner of**
 18 **the property, whichever occurs earlier, the prosecuting attorney**
 19 **shall:**

20 **(1) file an action for forfeiture and reimbursement of law**
 21 **enforcement costs in the court having jurisdiction over the**
 22 **related criminal case; or**

23 **(2) return the property to the owner.**

24 **An action for forfeiture shall be brought in the name of the state,**
 25 **or in the name of the state and the unit that employed the law**
 26 **enforcement officer who made the seizure, if the state was not the**
 27 **employer. If the prosecuting attorney returns the property to the**
 28 **owner, the owner is not liable for any costs or fees incurred in**
 29 **storing, transporting, or maintaining the property.**

30 (b) If the property seized was a vehicle or real property, the
 31 prosecuting attorney shall serve, under the Indiana Rules of Trial
 32 Procedure, a copy of the **complaint action for forfeiture** upon each
 33 person whose right, title, or interest is of record in the bureau of motor
 34 vehicles, in the county recorder's office, or other office authorized to
 35 receive or record vehicle or real property ownership interests.

36 (c) The owner of the seized property, or any person whose right,
 37 title, or interest is of record may, **within not later than** twenty (20)
 38 days after service of the **complaint action for forfeiture** under the
 39 Indiana Rules of Trial Procedure, file an answer to the **complaint**
 40 **action** and may appear at the hearing on the action.

41 (d) ~~If, at the end of the time allotted for an answer, there is no~~
 42 ~~answer on file, the court, upon motion, shall enter judgment in favor of~~



1 the state and the unit (if appropriate) for reimbursement of law
 2 enforcement costs and shall order the property disposed of in
 3 accordance with section 4 of this chapter.

4 **(d) Law enforcement costs recoverable under this section**
 5 **include only those expenses directly incurred in:**

- 6 **(1) arresting the owner of the property;**
 7 **(2) investigating the owner of the property; and**
 8 **(3) prosecuting the forfeiture action against the owner of the**
 9 **property.**

10 **Law enforcement costs incurred in the arrest of a person other**
 11 **than the owner of the property, in the investigation of a person**
 12 **other than the owner of the property, or in the prosecution of a**
 13 **forfeiture action against a person other than the owner of the**
 14 **property are not recoverable.**

15 SECTION 4. IC 34-24-1-4 IS REPEALED [EFFECTIVE JULY 1,
 16 2017]. Sec. 4: (a) At the hearing, the prosecuting attorney must show
 17 by a preponderance of the evidence that the property was within the
 18 definition of property subject to seizure under section 1 of this chapter.
 19 If the property seized was a vehicle, the prosecuting attorney must also
 20 show by a preponderance of the evidence that a person who has an
 21 ownership interest of record in the bureau of motor vehicles knew or
 22 had reason to know that the vehicle was being used in the commission
 23 of the offense.

24 (b) If the prosecuting attorney fails to meet the burden of proof, the
 25 court shall order the property released to the owner.

26 (c) If the court enters judgment in favor of the state, or the state and
 27 a unit (if appropriate), the court, subject to section 5 of this chapter,
 28 shall order delivery to the law enforcement agency that seized the
 29 property. The court's order may permit the agency to use the property
 30 for a period not to exceed three (3) years. However, the order must
 31 require that, after the period specified by the court, the law
 32 enforcement agency shall deliver the property to the county sheriff for
 33 public sale.

34 (d) If the court enters judgment in favor of the state, or the state and
 35 a unit (if appropriate), the court shall, subject to section 5 of this
 36 chapter:

- 37 (1) determine the amount of law enforcement costs; and
 38 (2) order that:
 39 (A) the property, if it is not money or real property, be sold
 40 under section 6 of this chapter, by the sheriff of the county in
 41 which the property was seized, and if the property is a vehicle,
 42 this sale must occur after any period of use specified in



- 1 subsection (c);
- 2 ~~(B)~~ the property, if it is real property, be sold in the same
- 3 manner as real property is sold on execution under IC 34-55-6;
- 4 ~~(C)~~ the proceeds of the sale or the money be:
- 5 (i) deposited in the general fund of the state; or the unit that
- 6 employed the law enforcement officers that seized the
- 7 property; or
- 8 (ii) deposited in the general fund of a unit if the property
- 9 was seized by a local law enforcement agency of the unit for
- 10 an offense, an attempted offense, or a conspiracy to commit
- 11 an offense under IC 35-47 as part of or in furtherance of an
- 12 act of terrorism; and
- 13 ~~(D)~~ any excess in value of the proceeds or the money over the
- 14 law enforcement costs be forfeited and transferred to the
- 15 treasurer of state for deposit in the common school fund:
- 16 (e) If property that is seized under this chapter (or IC 34-4-30.1-4
- 17 before its repeal) is transferred:
- 18 (1) after its seizure, but before an action is filed under section 3
- 19 of this chapter (or IC 34-4-30.1-3 before its repeal); or
- 20 (2) when an action filed under section 3 of this chapter (or
- 21 IC 34-4-30.1-3 before its repeal) is pending;
- 22 the person to whom the property is transferred must establish a
- 23 ownership interest of record as a bona fide purchaser for value. A
- 24 person is a bona fide purchaser for value under this section if the
- 25 person, at the time of the transfer, did not have reasonable cause to
- 26 believe that the property was subject to forfeiture under this chapter.
- 27 (f) If the property seized was an unlawful telecommunications
- 28 device (as defined in IC 35-45-13-6) or plans, instructions, or
- 29 publications used to commit an offense under IC 35-45-13, the court
- 30 may order the sheriff of the county in which the person was convicted
- 31 of an offense under IC 35-45-13 to destroy as contraband or to
- 32 otherwise lawfully dispose of the property.
- 33 SECTION 5. IC 34-24-1-4.1 IS ADDED TO THE INDIANA CODE
- 34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 35 1, 2017]: **Sec. 4.1. (a) A forfeiture proceeding:**
- 36 (1) must begin not later than seven (7) days after the
- 37 conclusion of the trial for the related criminal matter; and
- 38 (2) may, with the consent of the trial court, be held
- 39 immediately after the jury returns its verdict, in the same
- 40 manner as bifurcated trials are held.
- 41 (b) The proceeding under subsection (a) shall be conducted
- 42 before the same judge and, if applicable, the same jury.



1 (c) If the owner of the property is a defendant who was
2 represented by a public defender in the related criminal case, the
3 public defender may, if authorized by the chief public defender of
4 the county, represent the defendant in the forfeiture proceeding.

5 (d) Discovery in a forfeiture proceeding is subject to the Indiana
6 rules of criminal procedure.

7 (e) If the state, or the state and the unit (if applicable), fails to
8 prove by clear and convincing evidence that a person whose
9 property is alleged to be subject to forfeiture is an owner of the
10 property:

11 (1) the forfeiture proceeding shall be dismissed and the
12 property shall be delivered to the owner, unless the owner's
13 possession of the property is illegal; and

14 (2) the owner is not subject to any charges for storage of the
15 property or other expenses incurred in the preservation of the
16 property.

17 (f) The court shall order seized property forfeited if the state, or
18 the state and the unit (if applicable), proves by clear and
19 convincing evidence that:

20 (1) the property is subject to seizure under section 1 of this
21 chapter;

22 (2) the related criminal prosecution of the owner of the seized
23 property resulted in a conviction;

24 (3) the value of the property to be forfeited does not
25 unreasonably exceed the:

26 (A) pecuniary:

27 (i) gain derived or sought to be derived by the crime; or

28 (ii) loss caused or sought to be caused by the crime; and

29 (B) value of the convicted owner's interest in the property;
30 and

31 (4) forfeiture of the property is not disproportionate when
32 compared to the criminal act committed by the owner.

33 (g) In determining whether the value of property subject to
34 forfeiture unreasonably exceeds the amounts described in
35 subsection (f)(3), the court shall consider all relevant factors,
36 including the:

37 (1) fair market value of the property;

38 (2) value of the property to the defendant, including any
39 hardship that the defendant will suffer if the property is
40 forfeited; and

41 (3) hardship from the loss of a primary residence, motor
42 vehicle, or other property to the defendant's family members



1 or others if the property is forfeited.

2 In making its determination under this subsection, the court may
3 not consider the value of the property to the state, or the state and
4 the unit (if applicable).

5 (h) A court may not accept a plea agreement in which a
6 defendant agrees to donate property otherwise subject to forfeiture
7 to a person, charity, or other organization.

8 (i) A person is not jointly and severally liable for an order of
9 forfeiture. If property owned by more than one (1) person is
10 subject to forfeiture, the court shall, subject to section 5 of this
11 chapter, order each convicted person to forfeit the person's share
12 of the property on a pro rata basis or by another means the court
13 finds to be equitable.

14 SECTION 6. IC 34-24-1-4.2 IS ADDED TO THE INDIANA CODE
15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 2017]: Sec. 4.2. (a) If the court enters judgment in favor of the
17 state, or the state and a unit (if applicable), the court, subject to
18 section 5 of this chapter, shall order delivery of the property to the
19 law enforcement agency that seized the property. The court's order
20 may permit the agency to use the property for a period not to
21 exceed three (3) years. However, the order must require that, after
22 the period specified by the court, the law enforcement agency
23 deliver the property to the county sheriff for public sale.

24 (b) If the court enters judgment in favor of the state, or the state
25 and a unit (if applicable), the court shall, subject to section 5 of this
26 chapter:

27 (1) determine the amount of law enforcement costs (as
28 described in section 3 of this chapter); and

29 (2) order that:

30 (A) the property, if it is not money or real property, be sold
31 under section 6 of this chapter by the sheriff of the county
32 in which the property was seized, and if the property is a
33 vehicle, this sale must occur after any period of use
34 specified in subsection (a);

35 (B) the property, if it is real property, be sold in the same
36 manner as real property is sold on execution under
37 IC 34-55-6;

38 (C) the proceeds of the sale or the money must be:

39 (i) deposited in the general fund of the state, or the unit
40 that employed the law enforcement officers that seized
41 the property; or

42 (ii) deposited in the general fund of a unit if the property



1 was seized by a local law enforcement agency of the unit
 2 for an offense, an attempted offense, or a conspiracy to
 3 commit an offense under IC 35-47 as part of or in
 4 furtherance of an act of terrorism; and

5 **(D) any excess in value of the proceeds or the money over**
 6 **the law enforcement costs be forfeited and transferred to**
 7 **the treasurer of state for deposit in the common school**
 8 **fund.**

9 **(c) If property that is seized under this chapter is transferred:**

10 **(1) after its seizure, but before an action for forfeiture is filed**
 11 **under section 3 of this chapter; or**

12 **(2) while an action for forfeiture filed under section 3 of this**
 13 **chapter is pending;**

14 **the person to whom the property is transferred must establish an**
 15 **ownership interest of record as a bona fide purchaser for value. A**
 16 **person is a bona fide purchaser for value under this section if the**
 17 **person, at the time of the transfer, did not have reasonable cause**
 18 **to believe that the property was subject to forfeiture under this**
 19 **chapter.**

20 **(d) If the property seized was an unlawful telecommunications**
 21 **device (as defined in IC 35-45-13-6) or plans, instructions, or**
 22 **publications used to commit an offense under IC 35-45-13, the**
 23 **court may order the sheriff of the county in which the person was**
 24 **convicted of an offense under IC 35-45-13 to destroy as contraband**
 25 **or to otherwise lawfully dispose of the property.**

26 SECTION 7. IC 34-24-1-4.5, AS ADDED BY P.L.237-2015,
 27 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2017]: Sec. 4.5. (a) After a court enters a judgment in favor of
 29 the state or **the state and** a unit under section **4 4.1** of this chapter, the
 30 prosecuting attorney shall report the:

31 (1) amount of money or property that is the subject of the
 32 judgment; and

33 (2) law enforcement agency to which the money or property is
 34 ordered to be transferred;

35 to the Indiana prosecuting attorneys council. This subsection applies
 36 even if the prosecuting attorney has retained an attorney to bring an
 37 action under this chapter.

38 (b) After a court, upon motion of the prosecuting attorney under
 39 IC 35-33-5-5(j) **(as in effect before July 1, 2017, and before the**
 40 **repeal of IC 34-24-1-9)**, orders property transferred to a federal
 41 authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or
 42 21 U.S.C. 881(e), and any related regulations adopted by the United



1 States Department of Justice, the prosecuting attorney shall report to
 2 the Indiana prosecuting attorneys council the amount of money or
 3 property transferred. This subsection applies even if the prosecuting
 4 attorney has retained an attorney to bring an action under this chapter.

5 (c) A report made to the Indiana prosecuting attorneys council under
 6 this section must be in a format approved by the prosecuting attorneys
 7 council.

8 SECTION 8. IC 34-24-1-5 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. (a) If:

10 (1) the court has entered judgment in favor of the state **or the**
 11 **state** and a unit (if appropriate) concerning property that is
 12 subject to seizure under this chapter; and

13 (2) a person:

14 (A) holding a valid lien, mortgage, security interest, or interest
 15 under a conditional sales contract; or

16 (B) who is a co-owner of the property;

17 did not know of the illegal use;

18 the court shall determine whether the secured interest or the co-owner's
 19 interest is equal to or in excess of the appraised value of the property.

20 (b) Appraised value is to be determined as of the date of judgment
 21 on a wholesale basis by:

22 (1) agreement between the secured party or the co-owner and the
 23 prosecuting attorney; or

24 (2) the inheritance tax appraiser for the county in which the action
 25 is brought.

26 (c) If the amount:

27 (1) due to the secured party; or

28 (2) of the co-owner's interest;

29 is equal to or greater than the appraised value of the property, the court
 30 shall order the property released to the secured party or the co-owner.

31 (d) If the amount:

32 (1) due the secured party; or

33 (2) of the co-owner's interest;

34 is less than the appraised value of the property, the holder of the
 35 interest or the co-owner may pay into the court an amount equal to the
 36 owner's equity, which shall be the difference between the appraised
 37 value and the amount of the lien, mortgage, security interest, interest
 38 under a conditional sales contract, or co-owner's interest. Upon such
 39 payment, the state or unit, or both, shall relinquish all claims to the
 40 property, and the court shall order the payment deposited as provided
 41 in section ~~4(d)~~ **4.2(b)** of this chapter.

42 (e) If the seized property is a vehicle and if the security holder or the



1 co-owner elects not to make payment as stated in subsection (d), the
 2 vehicle shall be disposed of in accordance with section ~~4(e)~~ **4.2(a)** of
 3 this chapter.

4 SECTION 9. IC 34-24-1-6 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 6. (a) Where
 6 disposition of property is to be made at a public sale, notice of sale
 7 shall be published in accordance with IC 34-55-6.

8 (b) When property is sold at a public sale under this chapter, the
 9 proceeds shall be distributed in the following order:

10 (1) First, to the sheriff of the county for all expenditures made or
 11 incurred in connection with the sale, including storage,
 12 transportation, and necessary repair.

13 (2) Second, to any person:

14 (A) holding a valid lien, mortgage, land contract, or interest
 15 under a conditional sales contract or the holder of other such
 16 interest; or

17 (B) who is a co-owner and has an ownership interest;
 18 up to the amount of that person's interest as determined by the
 19 court.

20 (3) The remainder, if any, shall be transferred by the sheriff to the
 21 appropriate fund as ordered by the court in section ~~4(d)~~ **4.2(b)** of
 22 this chapter.

23 SECTION 10. IC 34-24-1-9 IS REPEALED [EFFECTIVE JULY 1,
 24 2017]. Sec. 9: (a) ~~Upon motion of a prosecuting attorney under~~
 25 ~~IC 35-33-5-5(j), property seized under this chapter must be transferred;~~
 26 ~~subject to the perfected liens or other security interests of any person~~
 27 ~~in the property, to the appropriate federal authority for disposition~~
 28 ~~under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any~~
 29 ~~related regulations adopted by the United States Department of Justice.~~

30 (b) Money received by a law enforcement agency as a result of a
 31 forfeiture under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C.
 32 881(e) and any related regulations adopted by the United States
 33 Department of Justice must be deposited into a nonreverting fund and
 34 may be expended only with the approval of:

35 (1) the executive (as defined in IC 36-1-2-5), if the money is
 36 received by a local law enforcement agency; or

37 (2) the governor, if the money is received by a law enforcement
 38 agency in the executive branch.

39 The money received under this subsection must be used solely for the
 40 benefit of any agency directly participating in the seizure or forfeiture
 41 for purposes consistent with federal laws and regulations.

42 SECTION 11. IC 35-33-5-5, AS AMENDED BY P.L.1-2007,



1 SECTION 225, IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2017]: Sec. 5. (a) All items of property seized
 3 by any law enforcement agency as a result of an arrest, search warrant,
 4 or warrantless search, shall be securely held by the law enforcement
 5 agency under the order of the court trying the cause, except as provided
 6 in this section.

7 (b) Evidence that consists of property obtained unlawfully from its
 8 owner may be returned by the law enforcement agency to the owner
 9 before trial, in accordance with IC 35-43-4-4(h).

10 (c) Following the final disposition of the cause at trial level or any
 11 other final disposition the following shall be done:

12 (1) Property which may be lawfully possessed shall be returned
 13 to its rightful owner, if known. If ownership is unknown, a
 14 reasonable attempt shall be made by the law enforcement agency
 15 holding the property to ascertain ownership of the property. After
 16 ninety (90) days from the time:

17 (A) the rightful owner has been notified to take possession of
 18 the property; or

19 (B) a reasonable effort has been made to ascertain ownership
 20 of the property;

21 the law enforcement agency holding the property shall, at a
 22 convenient time, dispose of this property at a public auction. The
 23 proceeds of this property shall be paid into the county general
 24 fund.

25 (2) Except as provided in subsection (e), property, the possession
 26 of which is unlawful, shall be destroyed by the law enforcement
 27 agency holding it sixty (60) days after final disposition of the
 28 cause.

29 (3) A firearm that has been seized from a person who is
 30 dangerous (as defined in IC 35-47-14-1) shall be retained,
 31 returned, or disposed of in accordance with IC 35-47-14.

32 (d) If any property described in subsection (c) was admitted into
 33 evidence in the cause, the property shall be disposed of in accordance
 34 with an order of the court trying the cause.

35 (e) A law enforcement agency may destroy or cause to be destroyed
 36 chemicals, controlled substances, or chemically contaminated
 37 equipment (including drug paraphernalia as described in
 38 IC 35-48-4-8.5) associated with the illegal manufacture of drugs or
 39 controlled substances without a court order if all the following
 40 conditions are met:

41 (1) The law enforcement agency collects and preserves a
 42 sufficient quantity of the chemicals, controlled substances, or



1 chemically contaminated equipment to demonstrate that the
2 chemicals, controlled substances, or chemically contaminated
3 equipment was associated with the illegal manufacture of drugs
4 or controlled substances.

5 (2) The law enforcement agency takes photographs of the illegal
6 drug manufacturing site that accurately depict the presence and
7 quantity of chemicals, controlled substances, and chemically
8 contaminated equipment.

9 (3) The law enforcement agency completes a chemical inventory
10 report that describes the type and quantities of chemicals,
11 controlled substances, and chemically contaminated equipment
12 present at the illegal manufacturing site.

13 The photographs and description of the property shall be admissible
14 into evidence in place of the actual physical evidence.

15 (f) For purposes of preserving the record of any conviction on
16 appeal, a photograph demonstrating the nature of the property, and an
17 adequate description of the property must be obtained before the
18 disposition of the property. In the event of a retrial, the photograph and
19 description of the property shall be admissible into evidence in place
20 of the actual physical evidence. All other rules of law governing the
21 admissibility of evidence shall apply to the photographs.

22 (g) The law enforcement agency disposing of property in any
23 manner provided in subsection (b), (c), or (e) shall maintain certified
24 records of any disposition under subsection (b), (c), or (e). Disposition
25 by destruction of property shall be witnessed by two (2) persons who
26 shall also attest to the destruction.

27 (h) This section does not affect the procedure for the disposition of
28 firearms seized by a law enforcement agency.

29 (i) A law enforcement agency that disposes of property by auction
30 under this section shall permanently stamp or otherwise permanently
31 identify the property as property sold by the law enforcement agency.

32 ~~(j) Upon motion of the prosecuting attorney, the court shall order~~
33 ~~property seized under IC 34-24-1 transferred; subject to the perfected~~
34 ~~liens or other security interests of any person in the property; to the~~
35 ~~appropriate federal authority for disposition under 18 U.S.C. 981(e), 19~~
36 ~~U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted~~
37 ~~by the United States Department of Justice.~~

